

ORIGINAL

NO. 83731-7

SUPREME COURT OF THE STATE OF WASHINGTON

In the Personal Restraint Petition of:

CHAD ALAN PIERCE,

Petitioner

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SUPREME COURT
STATE OF WASHINGTON

**BRIEF OF DEPARTMENT OF CORRECTIONS IN RESPONSE TO
AMICI CURIAE WASHINGTON ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS, THE WASHINGTON DEFENDER
ASSOCIATION, AND THE AMERICAN CIVIL LIBERTIES
UNION OF WASHINGTON**

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I. INTRODUCTION

This is a Personal Restraint Petition (PRP) filed by Washington State inmate Chad Pierce challenging the Department of Corrections' (Department) collection of costs of incarceration and legal financial obligations under RCW 72.09.111, RCW 72.09.480, and RCW 72.11.020. Amici has filed a brief arguing Pierce's judgment and sentence precludes the Department from collecting costs of incarceration from him. As shown below, the statutes in question explicitly require the Department to make deductions for costs of incarceration and the inmate's judgment and sentence does not bar these deductions.

II. ARGUMENT

The Department deducted money from Mr. Pierce's account in this case pursuant to a clear statutory mandate to do so. RCW 72.09.111; RCW 72.09.480. These statutes require the Department to deduct money for the cost of incarceration whenever an inmate receives money, without regard to whether such payment has previously been ordered by a court. Nevertheless, Amici argue that the Department must ignore this statutory mandate unless the Superior Court has ordered an inmate to pay cost of incarceration in the inmate's judgment and sentence under RCW

9.94A.760.¹ Amici's argument ignores the plain language of RCW 72.09.111 and RCW 72.09.480, numerous state and federal authorities and well established principles of statutory construction.

The fundamental objective of statutory construction is to ascertain and carry out the intent of the Legislature. *Bellevue Fire Fighters Local 1604 v. City of Bellevue*, 100 Wn.2d 748, 751, 675 P.2d 592 (1984), *cert. denied*, 471 U.S. 1015 (1985). Where statutory language is plain and unambiguous, the statute's meaning must be derived from the wording of the statute itself. *Bellevue Fire Fighters*, 100 Wn.2d at 750. Finally, in interpreting statutes, courts accord substantial weight to an agency's view of the law that it administers. *Glaubach v. Regence BlueShield*, 149 Wn.2d 827, 834, 74 P.3d 115 (2003).

A. Clear Statutes Require All Inmates To Pay Costs Of Incarceration

The plain language of the deduction statutes in RCW Title 72 refutes Amici's argument. RCW 72.09.111 states in relevant part:

(a) The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. . . . The formula *shall* include the following minimum deductions from class I gross wages, and from all others earning at least minimum wage: . . . (iii) Twenty percent to the department to contribute to the cost of incarceration; . . .

¹ Amici address only the issue of the Department's authority to collect costs of incarceration and do not address any of the other issues raised in Pierce's personal restraint petition. Accordingly, the Department addresses only that argument.

(b) The formula *shall* include the following minimum deductions from class II gross gratuities: . . . (iii) fifteen percent to the department to contribute to the cost of incarceration. . . .

(c) The formula *shall* include the following minimum deductions from any worker's compensation benefits paid pursuant to RCW 51.2.080: . . . (iii) Twenty percent to the department to contribute to the cost of incarceration. . . .

(e) The formula *shall* include the following; minimum deductions from class IV gross gratuities: . . . (i) Five percent to contribute to the cost of incarceration; . . .

RCW 72.09.111(1) (emphasis added).

Similarly, RCW 72.09.480 states in relevant part:

When an inmate . . . receives any funds in addition to his or her wages or gratuities, . . . the additional funds *shall* be subject to the following deductions and the priorities established in chapter 72.11 RCW: . . .

(e) Twenty percent to the department to contribute to the cost of incarceration.

RCW 72.09.480(2) (emphasis added).

The foregoing statutes apply on their face to all inmates who earn or receive money while in Department custody and require deductions for cost of incarceration without regard to the specific provisions in their judgments and sentences. Amici incorrectly assert that these statutes authorize deductions only for legal financial obligations imposed by a court. Amici Br. at 8. To the contrary, the actual language of the statutes provides for deductions of court-ordered legal financial obligations in

addition to other costs. See RCW 72.09.480(2) (providing separate deductions for court-ordered legal financial obligations, victim compensation fund, and cost of incarceration); RCW 72.09.111 (same). Nothing in these statutes suggests that the deductions for cost of incarceration are conditional or dependent on the criminal sentencing court ordering an inmate to pay costs of incarceration pursuant to RCW 9.94A.760.

B. Case Law Supports The Department's Interpretation Of Statutes Requiring Inmates To Pay Costs Of Incarceration

Court decisions applying the deduction statutes at issue reinforce the plain meaning of the statutes that require deductions for costs of incarceration regardless of what a court has imposed as a criminal sentence. All the courts that have addressed challenges to the deduction statutes have either explicitly held or implicitly assumed that the deductions listed in the statutes, including the deduction for cost of incarceration, apply to all inmates regardless of the provisions in their judgments and sentences.

This Court has recognized that the deductions in RCW Title 72 for cost of incarceration are not deductions to collect costs of incarceration imposed by the criminal sentencing court:

Suzanne Dean (Dean), wife of a Department of Corrections (DOC) inmate sent money to her husband during his

incarceration. She represents a class of similarly situated persons (Class) challenging the validity of RCW 72.09.480, *which mandates the deduction of 35 percent of all funds received by prison inmates.*

Dean v. Lehman, 143 Wn.2d 12, 15-16, 18 P.3d 523 (2001) (emphasis added).

Dean also rejects Amici's argument that the cost of incarceration deductions in RCW Title 72 are only the punitive costs of incarceration that may be imposed on a criminal defendant by a sentencing court:

While the 20 percent deduction serves a regulatory purpose, the 10 percent deduction is a forced savings account for the inmate. Since the deductions in their entirety are capped at the cost of the inmate's incarceration we believe RCW 72.09.480 is best described as a recoupment provision, designed to collect a fee for specific services rendered by the state to inmates. . . . Viewed in this light the deductions authorized by RCW 72.09.480 are essentially akin to a direct "user fee," in that they allow DOC to recoup its expenditures, but no more.

Dean at 28-29.

As the Court in *In re Personal Restraint of Metcalf*, 92 Wn. App. 165, 182, 963 P.2d 911 (1998), reasoned:

While it is true that every inmate has been convicted of some crime, the deductions are not concerned with what crime, or how many, or how serious; the deductions apply equally to all inmates. No behavior is involved, per se; rather, the triggering event is receipt of funds in an inmate's account.

Although referring specifically only to the five percent crime victims compensation deduction in RCW 72.09.480, the Ninth Circuit Court of Appeals also acknowledged that the deduction statutes apply to all inmates regardless of the provisions in any particular inmate's judgment and sentence:

Indeed, even more comprehensive than the federal MVRA [Mandatory Victims' Restitution Act, 18 U.S.C. §§ 3663A-3664], the Washington Statute provides that five percent of funds received by each and every inmate is deposited into a general account allocated to crime victim's compensation. Thus, regardless of whether an inmate committed an offense for which restitution is appropriate and regardless of whether the inmate had already been ordered to pay court-ordered restitution at sentencing, the inmate is required under the Statute to surrender 5% of the funds he receives.

Wright v. Riveland, 219 F.3d 905, 915 (9th Cir. 2000).

In *Wright*, the parties and the court acknowledged that the cost of incarceration deductions under RCW 72.09.480 were distinct from and in addition to any costs of incarceration imposed by the criminal sentencing court under RCW 9.94A.145:

The Class further contends that a post-amendment inquiry is necessary because inmates are overpaying their costs of incarceration under duplicative Washington statutes. RCW 9.95A.145 allows the sentencing court to require a felony offender to pay for the cost of incarceration if the court determines that the offender has the appropriate financial means. *See* Wash. Rev. Code Ann. § 9.94A.145 (West 1999). As RCW 9.94A.145 and the Statute at issue contain no reference to the other, the Class contends that

inmates could be made to pay more than their actual cost of incarceration . . . Only after legal financial obligations are satisfied can the Secretary deduct statutorily-imposed withdrawals from the inmate's account.

Id. at 219 F.3d at 918.

The *Wright* court would not have engaged in any analysis of the Class's claim that inmates could pay more than the actual cost of their incarceration if it had not agreed with the Class's assertion that the costs of incarceration the Department must collect under RCW Title 72 are distinct from and in addition to any costs of incarceration that may be ordered by a criminal sentencing court.

C. The Costs Of Incarceration The Department Must Collect Under RCW Title 72 Are Separate And Distinct From Costs Of Incarceration That May Be Imposed Under RCW 9.94A.760

A review of RCW 9.94A.760 and the statutes related to the deductions statutes likewise reveals that the Department is required to collect cost of incarceration from all inmates. Under RCW 9.94A.760, if the sentencing court finds that a defendant sentenced to prison "has the means to pay for the cost of incarceration," the sentencing court "may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison." RCW 9.94A.760(2). Funds recovered for "costs of incarceration in a prison shall be remitted to the department." *Id.* As such, under RCW

9.94A.760(2), criminal defendants may be ordered to pay precisely \$18,250.00 per year of incarceration in prison, and only if the defendant has sufficient means at the time of sentencing to pay.

Unlike the cost of incarceration that may be ordered under RCW 9.94A.760, the costs of incarceration collected under RCW Title 72 are not set at a daily rate of \$50.00 but are instead collected only as a percentage (20%) of the funds inmates earn or receive in prison. Contrary to Amici's suggestion, the amount deducted by the Department is not unlimited; rather, the total funds collected under RCW 72.09.480 are limited to "the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer." RCW 72.09.480(5). For purposes of the limit on deductions under RCW 72.09.480(5), cost of incarceration is defined as:

. . . the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

RCW 72.09.480(1)(a).

The fact that cost of incarceration under RCW 9.94A.760 is different from cost of incarceration under RCW Title 72 in terms of rates of collection, limits on the amount that may be collected, and where the

funds are to be deposited and/or utilized, reinforces that the cost of incarceration that the Legislature has required the Department to collect is distinct from any cost of incarceration imposed as a condition of sentence.

Amici's argument is undercut by the Legislature's mandate that the Department collect both costs of incarceration and legal financial obligations (LFOs) from inmate's funds. RCW 72.09.111(1)(a); RCW 72.09.480(2). Amici argues, and the Department agrees, that cost of incarceration imposed by a sentencing court is an LFO as it is a sum of money ordered to be paid by the court resulting from a criminal conviction. *See* Amici Br. at 7; RCW 9.94A.030(28). The requirement in the deduction statutes in RCW Title 72 that the Department collect both LFOs and cost of incarceration demonstrates conclusively that the cost of incarceration deduction in RCW Title 72 is distinct from and in addition to the cost of incarceration assessment that may be imposed by a sentencing court as a component of an offender's LFO.

Amici's argument is also undercut by the Legislature's direction to the Department concerning deductions from class IV gratuities:

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; and

(ii) Fifteen percent for any child support owed under a support order.

RCW 72.09.111(1)(e).

This statute does not allow or require the Department to collect LFOs from class IV gratuities but nevertheless requires the Department to collect cost of incarceration. The deduction scheme for class IV gratuities demonstrates conclusively that the Legislature intended cost of incarceration to be collected by the Department under RCW Title 72 independently of the costs of incarceration that may be imposed by a sentencing court as a component of an offender's LFO.

Amici argue that adoption of the Department's interpretation of RCW 72.09.480 would lead to a result the Legislature did not intend:

DOC's interpretation of RCW 72.09.480(2) permits it to seize 20 percent of any deposit for legal financial obligations under subsection (2)(c) (which include costs of incarceration), *and* 20 percent of costs of incarceration under subsection (2)(e). The Legislature could not have intended this duplicative method of collecting costs of incarceration.

See Amici Br. at 16.

While Amici may find it absurd that the Legislature required the Department to deduct 20 percent of any deposit for costs of incarceration in addition to 20 percent for legal financial obligations, which may or may not include cost of incarceration, that is plainly what the language of the

statute requires. RCW 72.09.480(2) explicitly requires the Department to collect 20 percent for LFOs and 20 percent for cost of incarceration from funds inmates receive other than their wages and gratuities. RCW 72.09.480(2)(c),(e). The Department is interpreting and applying this statute exactly as it was written by the Legislature. Amici's argument that the Legislature did not intend precisely what the statute plainly states must be rejected.

Moreover, Amici's argument demonstrates the fatal flaw in their proposed interpretation. If one accepts Amici's argument, then the Department may only collect costs of incarceration when court-ordered, which makes it subject to the section regarding deductions for legal financial obligations. Amici thus delete entirely the section allowing for deductions for cost of incarceration because that section would never be applicable. Not only does this reach an absurd result, but it violates the principle that statutes must be read to give effect to all language. *In re Recall of Pearsall-Stipek*, 141 Wn.2d 756, 769, 10 P.3d 1034 (2000).

Amici also argue that differences in language used in RCW 9.94A.760(2) and RCW 72.09.480(2), demonstrate the Legislature's intent

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to allow the Department to collect only the cost of incarceration imposed by the sentencing court:

Nor does DOC explain why the Legislature used the empowering term “require the offender to pay” in RCW 9.94A.760(2), but opted for the ministerial “deduct” in RCW 72.09.480(2).

Amici Br. at 16.

Even if these differences in language provided any guidance to the issue presented, examining these statutes in full shows that Amici’s argument must fail. RCW 9.94A.760(2) states that the sentencing court “may” require an offender to pay cost of incarceration. RCW 72.09.111 and RCW 72.09.480 state that the Department “shall” collect cost of incarceration from the funds inmates earn or receive. Amici’s selective citation of the language of the statutes at issue should be rejected.

Finally, this Court recognized in *Dean* that the purpose underlying the deduction statutes in RCW Title 72 was to require all inmates to contribute to the costs they have imposed on the public by their criminal behavior:

The overall scheme of the deductions authorized by RCW 72.09.480 is to seek recompense for the costs associated with incarcerating an inmate.

Dean at 33.

Amici's novel arguments contravene the plain language and the underlying purpose of the deduction statutes and should be rejected.


III. CONCLUSION

The court that sentenced Pierce for his conviction on two counts of child molestation declined to order Pierce to pay cost of incarceration under RCW 9.94A.760(2); the court did not waive the costs of incarceration that the Legislature has unambiguously required the Department to collect from all inmates when they earn or receive funds while incarcerated in Department prisons under RCW 72.09.111 and RCW 72.09.480.

For the foregoing reasons, Respondent Department respectfully requests this Court to affirm the Court of Appeals' dismissal of Pierce's personal restraint petition.

RESPECTFULLY SUBMITTED this 7th day of March, 2011.

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CERTIFICATE OF SERVICE

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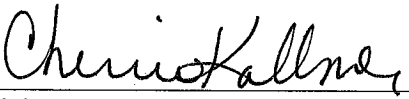
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I certify under penalty of perjury that the foregoing is true and correct.

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